

Appl. No. 10/773,927
Amdt. Dated 8/10/2006
Reply to Office Action of May 11, 2006

AUG 10 2006

REMARKS

Claims 1-12, 14-16, 18-19 and 21-23 are pending and claims 1, 2, 3, 8, 12, 15, 18, and 21 stand rejected under 35 USC §103(a) as being unpatentable over Getgey et al., U.S. Patent No. 4,662,856 in view of Eppley, U.S. Patent No. 6,099,379. Claims 9-11 stand rejected under 35 USC §103(a) as being unpatentable over Getgey et al., U.S. Patent No. 4,662,856 in view of Wintriss, U.S. Patent No. 2,536,523. Claims 13, 17 and 20 are cancelled without prejudice. New claims 22 and 23 are added. Claim 16 is indicated as allowed, and claims 4-7, 13, 14 and 19-20 were indicated as reciting allowable subject matter.

U.S. Pat. No. 4,662,856 to Getgey et al. for "Animated Toy" issued May 5, 1987 discloses an animated plush toy with facial features such as a nose and eyes. The facial features have pins that penetrate the plush cover and affix to a plate that is driven by a cam mechanism. The plate moves generally vertically thereby effecting expansion and collapse of the plush cover for creating the impression of a living, breathing animal. Although movement of the plush and features is accomplished, the toy's eyes and movement fall short of the life-like realism demanded by modern consumers. Getgey's device features a plate that receives both the plush and pins 78 which extend through holes 80 (see Col. 3, l. 42), none of which are integral with the spherical portion of the eye; on the other hand Applicant's recited structure has its plush-engaging member integral with the eye member itself with which plush affixed to the eye. Getgey's plush is not attached to the eye.

On the other hand, the Applicants' invention concerns an artificial eye for use in animated plush toys that has a one-piece eyeball and lid that are integrally molded. The eye further includes a plush-engaging member that is integral with the eye and operative to animate a portion of plush with movement of the eye. When the eye is rotated, the

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plush portion also moves, thereby simulating for example the opening and closing of an eyelid.

NO PORTION OF THE GETGEY DEVICE THAT IS INTEGRAL WITH THE SPHERICAL
PORTION OF THE EYES ENGAGES THE PLUSH TO EFFECT MOVEMENT

Applicants' claim 1 describes a plush-engaging member that is integral with the spherical portion of the eye to effect movement of the plush with the eye assembly. The requirement that the plush-engaging member be integral with the eye distinguishes the claim from Getgey, which discloses pins attached to the eyes that penetrate through holes in the plush and are fixedly secured within a plate positioned directly underneath the plush. Getgey, column 3, lines 37-39 state, "The underside 71 of the plush fabric cover 14 is attached to the cam rod 32 by means of the plate 36 formed on the outer end of the cam rod." The Getgey device features a plate to receive both the plush and pins attached to the eyes, none of which are integral with the spherical portion of the eye.

Furthermore, claim 1 requires that the plush be affixed to the plush-engaging member for movement of the plush with the eye assembly. In contrast, the plush in the Getgey device is only attached to the plate, so that movement of the plush is effected by the plate rather than the eye assembly. Column 2, lines 47-55 state, "In the use of the animated toy 10, the toy is manually moved over the planar surface 30 while the bottom of the wheel 18 frictionally engages that planar surface. This results in the cam mechanism 16 causing the plush fabric cover, including its attached animal features 20, to move up and down, thereby imparting to the animated toy the impression that it is a living animal which breathes or expands and contracts as it is moved over the surface 30." In light of this distinction, it is the plate and not the eye assembly that is moving the plush; the pins attached to the eye merely insert through holes in the plush. In no way does any portion of the Getgey device that is integral with the eyes engage the plush to effect movement of the plush.

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Getgey, itself or in combination with Eppley, neither teaches nor suggests a plush-engaging member integral with the spherical portion of the eyes with the plush affixed thereto for movement of the plush with the eye assembly.

Claim 21 is recited as follows:

21. (Previously Presented – Not Currently Amended) An artificial eye assembly for an animated plush toy operative to animate a portion of plush contiguous to the eye assembly comprising:

one or more transparent, spherical members having a convex surface and a concave surface;

at least one three-dimensional border member partially surrounding and unitary with said one or more transparent, spherical members; and

a plush-engaging member integral with said one or more transparent, spherical members receiving the portion of the plush contiguous to the eye assembly being inserted between said three-dimensional border member and the plush-engaging member extending the plush behind said one or more transparent, spherical members and affixed thereto for movement of the plush with the eye assembly. (Emphasis Added).

As claim 21 includes all of the limitations of claim 1, the arguments regarding claim 1 apply. No portion of the Getgey device that is integral with the spherical portion of the eyes engages the plush to effect movement.

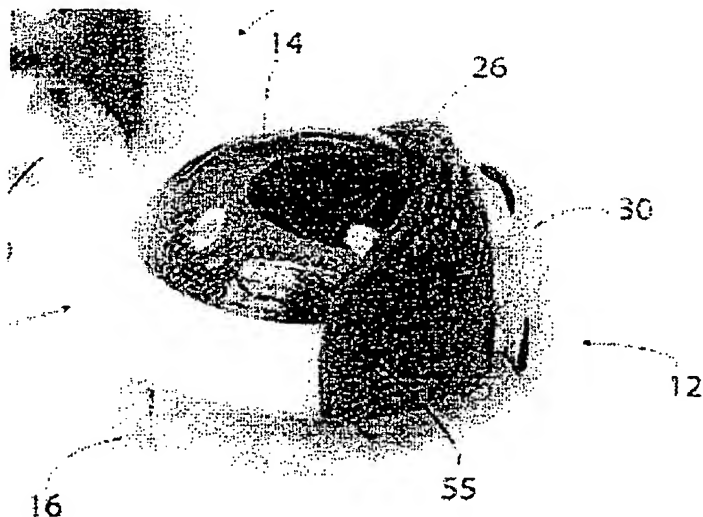
EXAMINER'S ACTION DOES NOT ADDRESS RECITATIONS IN CLAIM 21 THAT A PORTION OF THE PLUSH CONTIGUOUS TO THE EYE ASSEMBLY BE INSERTED BETWEEN THE THREE-DIMENSIONAL BORDER MEMBER AND THE PLUSH-ENGAGING MEMBER

Claim 21 further defines that a portion of the plush contiguous to the eye assembly be inserted between the three-dimensional border member (e.g., eyelid) and the plush-engaging member integral with the spherical portion of the eyes. The examiner in

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no way addressed the limitation regarding a portion of the plush being inserted between the three-dimensional border member and the plush-engaging member. As discussed on pages 9 and 10 of Applicant's Specification, for each spherical (eye) member of the eye assembly, a portion of the plush cover (e.g. the flap 320) is inserted between the shaped engaging member and the border member. The examiner did not cite this feature in the prior art.

Getgey's plush is not attached to the eye. Getgey's device features a plate that receives both the plush and pins 78 which extend through holes 80 (see Col. 3, l. 42), none of which are integral with the spherical portion of the eye; on the other hand Applicant's recited structure has its plush-engaging member integral with the eye member itself with which plush affixed to the eye. As discussed on pages 9 and 10 and elsewhere throughout Applicant's Specification, for each eye member a portion of the plush (e.g. the flap 320) is inserted at the engaging member. For example as shown in Fig. 11, the crook of the flap 320 engages the shaped engaging member attached to the eye and the first branch 330 is stretched across with the free end affixed to the eye. Getgey et al. and Eppley neither teach nor suggest attaching plush to the eye itself as described and claimed.



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As shown above, an animated plush toy is not shown or suggested in the prior art having an artificial eye assembly with an eye member (14) including an eyelid border member (26) and a plush-engaging member (12) integral with the eye member (14) for receiving the portion of the plush being inserted between the three-dimensional border member and the plush-engaging member as claimed.

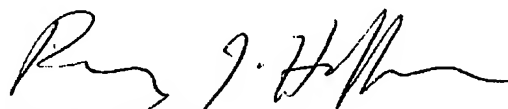
Claim 12 has been amended to include the limitation that the cover-engaging member be radially spaced from the three-dimensional border member. As discussed on page 7 of Applicant's Specification, part of the cover-engaging member, the crossplate 30, is spaced from the border member 26 and curved radially to conform substantially to the curvature of the spherical bowl-shaped member 14. This downward curvature assists in obscuring the spherical bowl-shaped member when the eye assembly is rotated downward.

If the Examiner would like to discuss Applicant's invention prior to issuing an action, the Examiner should feel free to contact the undersigned attorney.

In view of the foregoing, Applicant has placed the case in condition for reconsideration and respectfully requests allowance of pending Claims 1-12, 14-16, 18-19 and 21-23.

Respectfully submitted,

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